

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39M), a California corporation, and Signature Properties, Inc., a California corporation, for an Order Authorizing the Former to Sell and Convey to the Latter a Parcel of Land in Marin County Pursuant to Public Utilities Code Section 851.

Application 02-07-033
(Filed July 17, 2002)

OPINION GRANTING PETITION TO MODIFY**1. Summary**

This decision grants the petition to modify filed by Pacific Gas and Electric Company (PG&E) to correct minor technical errors in Decision (D.) 03-03-008.

2. Background

In D. 03-03-008, we granted the application of PG&E for authorization, pursuant to Section 851¹, to convey a parcel of land located in Marin County to Signature Properties, Inc. (Signature Properties).

PG&E subsequently filed a timely petition to modify D.03-03-008 (Petition). No opposition to the Petition was filed.

3. Discussion

PG&E's petition asks the Commission to modify D.03-03-008 to correct several minor technical errors.

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

First, PG&E requests correction of D.03-03-008 to reflect that PG&E shall bear the cost of relocating certain utility facilities on the parcel sold to Signature Properties through a “Holdback Amount” to be deducted from the purchase price and held in escrow for PG&E’ use.

Under Paragraph 6.5 of the Restated Real Estate Purchase and Sale Agreement (Agreement) and Paragraph 2 of the First Amendment to the Agreement (First Amendment), PG&E is responsible for relocating utility facilities on the site, if necessary. Signature Properties was required to deposit \$410,000, (the Relocation Deposit) directly with PG&E prior to the close of escrow to reimburse PG&E for any relocation costs. At closing, a portion of the purchase price equal to the estimated relocation costs less those relocation costs incurred and paid for by PG&E before closing (the Holdback Amount) must be placed into escrow and disbursed to PG&E for any remaining work, pursuant to the escrow agreement.

The third sentence of the third paragraph on page 3 of D.03-03-008 states that: “Signature Properties will bear all costs related to relocation of PG&E facilities performed in accordance with drawings approved by both parties....” We will grant PG&E’s request to amend this language to clarify that PG&E is responsible for relocation costs, which are to be paid from the Relocation Deposit and the Holdback Amount. The third sentence of the third paragraph on page 3 of D.03-03-008 is therefore modified to read as follows:

PG&E will bear all costs related to relocation of the PG&E facilities performed in accordance with drawings approved by both parties. Signature Properties has deposited \$410,000 directly with PG&E (“Relocation Deposit”) for relocation costs incurred and paid for by PG&E prior to escrow.

Relocation costs incurred by and paid for by PG&E after the close of escrow shall be paid out of the “Holdback Amount”, an amount deducted from the purchase price, reserved in escrow, and disbursed in accordance with the terms of the Escrow Agreement.

Second, PG&E’s petition points out that although Exhibit G of the application calculated the gain on sale to be approximately \$4,388,407.00, Exhibit G failed to reflect that the gain on sale will be reduced by the Holdback Amount, because PG&E is required to use these funds for any necessary relocation of utility facilities, and by an additional \$14,500.00, because Signature Properties is entitled to receive a credit in this amount as reimbursement for the appraisal of the property. PG&E therefore asks the Commission to correct the stated amount of PG&E’s gain on sale in D.03-03-008. We therefore replace the sentence on page 9 which reads, “PG&E’s net proceeds from the sale after taxes will be approximately \$4,388, 407” with the following language:

According to the application, PG&E’s net proceeds from the sale after taxes will be approximately \$4,388,407, less the Holdback Amount and the reimbursement of Signature Properties for appraisal of the property.

In addition, we grant PG&E’s request to strike the sentence on page 13 that reads, “Late filed comments were received from PG&E on March 11, 2003,” because PG&E’s comments were timely filed. We grant PG&E’s request and replace the above sentence on page 13 with the following language:

Reply comments were received from PG&E on March 10, 2003.

We also delete footnote 13.

4. Comments on Draft Decision

This is an uncontested matter in which the decision [OR resolution] grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. The Agreement, as amended, provides that PG&E is responsible for the cost of relocating utility facilities located on the land sold to Signature Properties, if necessary.

2. The Agreement, as amended, states that PG&E shall use a the Relocation Deposit, e.g., \$410,000 deposited by Signature Properties directly with PG&E, to fund any necessary relocation of utility facilities prior to escrow.

3. The Agreement, as amended, provides that PG&E will utilize the Holdback Amount, e.g., a portion of the purchase price equal to the estimated costs of relocating utility facilities less any relocation costs incurred and paid for by PG&E before closing, for any remaining relocation work after the close of escrow.

4. Exhibit G to PG&E's application incorrectly stated that PG&E's gain on sale would be approximately \$4,388,407.00, because this amount should be reduced by the Holdback Amount and the cost of reimbursing Signature Properties for the appraisal of the property.

5. Exhibit G should be corrected to state that PG&E's gain on sale will be approximately \$4,388,407, less the Holdback Amount and the amount of the reimbursement of Signature Properties for the appraisal of the property.

6. PG&E's reply comments on the proposed decision were timely filed.

Conclusions of Law

7. Under the Agreement, as amended, PG&E is responsible for the cost of relocating any utility facilities located on the property sold to Signature Properties and shall utilize the Relocation Deposit and the Holdback Amount to fund any relocation necessary work.

8. PG&E's petition to modify should be granted.

O R D E R

1. Pacific Gas and Electric Company's petition to modify Decision (D.) 02-07-033 is granted.

2. D.02-07-033 shall be modified as indicated in the text of this decision above.

3. This proceeding is closed.

This order is effective today.

Dated _____, 2003 at San Francisco, California.